

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF OHIO

3 WESTERN DIVISION

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4 UNITED STATES OF AMERICA, : CRIMINAL ACTION CR-1-02-054
5 :
6 Plaintiff, : Cincinnati, Ohio
7 : Wednesday, August 21, 2002
8 -vs- :
9 :
10 WALTER PUGH, JR, and : MOTION TO SUPPRESS
11 TYREESE PUGH, : AND FINAL PRETRIAL CONFERENCE
12 :
13 Defendants. : 1:30 p.m.

- - -

14 TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE SUSAN J. DLOTT, JUDGE

- - -

16 For the Plaintiff: Wende Cross, Esq.
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22 For the Defendant: Pro Se
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33 Law Clerk: Mike Rich
34 Courtroom Deputy: Steve Snyder
35 Court Reporter: Betty Schwab

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PROCEEDINGS

THE COURTROOM DEPUTY: The case is CR-1-02-54,
United States of America v. Walter Pugh and Tyreese Pugh.

THE COURT: Good afternoon to everyone. We're
here on the motion of Defendant Walter Pugh to suppress
various evidence that he argues was obtained in violation
of the Fourth Amendment.

In addition to the defendant Walter Pugh's
motion, the Court just received Defendant's trial brief and
a motion to extend time for filing Defendant's response to
the suppression.

Has the government received a copy of those
pleadings?

MS. CROSS: We have, Your Honor. We have no
objection to the motion to extend time for filing of their
response.

THE COURT: I'm having difficulty hearing you.

MS. CROSS: I'm sorry, Your Honor. I will keep
my voice up. We have received both the trial brief and the
motion. We have no objection to extending time if the
Court be so inclined for Mr. Pugh to file his response to
our response to his reply.

THE COURT: All right. Mr. Pugh, how much time
would you like to file a written response?

DEFENDANT W. PUGH: I don't know, Judge, Your

1 Honor, because last Wednesday the United States came in and
2 took out the computers out of the law library.

3 THE COURT: At the Hamilton County Courthouse?

4 DEFENDANT W. PUGH: Yes, ma'am.

5 THE COURT: I don't think so.

6 DEFENDANT W. PUGH: That's what I was told.

7 THE COURT: I tell you what, I don't know for a
8 fact, but we had -- the United States government has
9 absolutely no jurisdiction in the Hamilton County Justice
10 Center, and, in fact, if Sheriff Leis had let any federal
11 government official in there to do anything, I would be
12 shocked. So I think it's unlikely that it's the U.S.
13 government that did it. I would suspect that it has to do
14 with the sheriff's office.

15 DEFENDANT W. PUGH: Yes, ma'am.

16 THE COURT: But let me assure you of one thing,
17 that Fourth Amendment law is pretty well settled. It's
18 been established for a long time. It's relatively simple.
19 I'm very familiar with it. I believe, based on what I have
20 read of your motion and everything, that I think this is a
21 factually intense matter. I think it depends more on the
22 facts of what occurred than on the law. I think the law is
23 simple in this area.

24 There is really not much new in Fourth Amendment
25 law, but, if you would like, you know, if you would like a

1 week to file something additional, you're welcome to do
2 that.

3 DEFENDANT W. PUGH: Thank you.

4 MR. ANDREWS: Your Honor, as -- just as his
5 advisor, I will contact Joe Schmidt, who is one of the
6 senior people in the jail, and see what the problem is with
7 the computers and make sure that my client -- or make sure
8 that Mr. Pugh has access to what he needs.

9 THE COURT: Thank you, Mr. Andrews.

10 Why don't I have counsel enter their appearances
11 for the record?

12 MS. CROSS: Your Honor, Wende Cross, Your Honor,
13 for the United States, along with Amul Thapar and Detective
14 Jim Calhoun of the Hamilton Police Department.

15 THE COURT: All right.

16 MR. FELSON: Edward Felson for Mr. Pugh,
17 Defendant Pugh, Jr.

18 THE COURT: That's Tyreese Pugh.

19 MR. FELSON: Tyreese, yes.

20 DEFENDANT W. PUGH: Walter Pugh, pro se.

21 THE COURT: And you have with you your advisor?

22 MR. ANDREWS: J. Robert Andrews acting in
23 advisory capacity to Mr. Pugh.

24 THE COURT: Although this is the defendant's
25 motion, it's my practice to let the government proceed in

1 these matters. So at this time I'll turn it over to the
2 government.

3 MS. CROSS: Your Honor, just for clarification,
4 it's the position of the United States that Mr. Pugh has no
5 standing on three of the four issues in this case. He has
6 moved to suppress all physical evidence in this case
7 obtained from four locations, two vehicles, a home, and
8 then his own vehicle. It is the position of the United
9 States that he has no standing to challenge the searches of
10 the two vehicles owned by Kimberly Hinton and Bessie Pew,
11 and he has no standing to challenge the search of the
12 residence of Cortes Renfro, and it is our position that the
13 search of his 1989 Cadillac de Ville was valid pursuant to
14 a valid search warrant.

15 We intend to call one witness on the issues
16 today.

17 THE COURT: All right.

18 MS. CROSS: That is Detective Jim Calhoun.

19 THE COURT: All right. You may call your
20 witness.

21 (Witness sworn by the courtroom deputy.)

22 THE COURT: Counsel, let me say that we're sort
23 of experimenting today with the courtroom, because it's the
24 first time we have used it for a criminal proceeding since
25 it has been remodeled, and it's substantially different in

1 size, and also what we're trying to ascertain is how we
2 will conduct the trial with the defendants at counsel table
3 and Mr. Pugh representing himself from counsel table. So
4 I'm not quite sure about standing and sitting.

5 Let me ask you this, Mr. Pugh, is it difficult
6 for you to stand if you want to address the Court, or is
7 it -- is that possible?

8 DEFENDANT W. PUGH: It would be more comfortable
9 if I could sit down.

10 THE COURT: Okay. Second question for you. If
11 for the trial, if you didn't have the leg irons on, would
12 you then be able to stand comfortably, or do you just
13 prefer to address the Court sitting from counsel table?

14 DEFENDANT W. PUGH: Sitting.

15 THE COURT: Okay. All right.

16 Okay. You may proceed. In this proceeding,
17 Ms. Cross, I don't care if you sit or stand.

18 DEFENDANT W. PUGH: If I didn't have the cuffs
19 on, I prefer to stand.

20 THE COURT: Okay. That's what I'm asking,
21 because I think, for the trial, we are not going to have
22 the -- I don't think -- I've still got to discuss this with
23 the marshal, but I think we may not have the cuffs on you.
24 What we may do instead is use some kind of belt to make
25 sure that you're secure but that there is nothing visible

1 to the jury.

2 You look like you're puzzled. Can I --

3 MR. ANDREWS: I think he's, as I am, just trying
4 to envision what that would be like. But we will cross
5 that bridge when we get to it.

6 THE COURT: Let me say this. I just used it in a
7 trial, in the last criminal trial I had with Mr. Waagner, a
8 defendant who was -- I guess he wasn't at the Hamilton
9 County -- well, he was at Boone County. One of you is at
10 Boone County, I know. And it worked really well. It
11 didn't bother him. It wasn't uncomfortable. It fits under
12 your shirt, goes around your waist, and it's not at all
13 visible to the jury. And it sort of gives you freedom of
14 movement. You can stand. You can walk, you know, a little
15 bit, and stuff. So it's something to consider.

16 And you want to ask me any questions about it?

17 DEFENDANT W. PUGH: Not at this particular time.

18 THE COURT: If you do, just let the Court know.

19 All right. Ms. Cross, I'm sorry. You may
20 proceed.

21 MS. CROSS: Thank you, Your Honor. If it please
22 the Court, I prefer to sit today.

23 THE COURT: Okay. That's fine.

24 JIM CALHOUN

25 DIRECT EXAMINATION

1 BY MS. CROSS:

2 Q. Please state your name for the record and spell your
3 last name.

4 A. Jim Calhoun, C-a-l-h-o-u-n.

5 Q. Where and how are you employed?

6 A. I'm a detective with the City of Hamilton, Ohio Police
7 Department.

8 Q. And how long have you been so employed in that
9 capacity?

10 A. As a detective for the past four years.

11 Q. How long have you been working in law enforcement?

12 A. For thirteen years now.

13 Q. Are you familiar with the events of a bank robbery in
14 the City of Hamilton, Ohio, in April of 2002?

15 A. Yes, ma'am.

16 Q. Were you involved in the investigation of that bank
17 robbery in any way?

18 A. Yes, I was.

19 Q. What bank was robbed?

20 A. First National Bank Southwestern Ohio located at the
21 corner of Peck and Williams Boulevard in the City of
22 Hamilton, Ohio.

23 Q. And what exact date was the robbery?

24 A. It was April 24th.

25 Q. Based on your investigation, how was the robbery

1 perpetrated?

2 A. Based on the investigation, what I learned was two
3 male black subjects entered the bank, both carrying
4 firearms. They put the manager of the bank on the ground.
5 The tellers were told to empty their drawers into a trash
6 can that one of the males had picked up from inside the
7 bank. Then one teller was put on the ground. The second
8 teller was taken into the vault of the bank, told to empty
9 the vault into the trash can. Both males then fled in a
10 maroon Cutlass Ciera.

11 Q. Detective Calhoun, Defendant Walter Pugh has filed a
12 motion to suppress all the physical evidence that was
13 obtained in this case. Were you responsible for obtaining
14 any of the physical evidence in this case against him?

15 A. Yes, ma'am.

16 Q. Briefly describe the areas from which you obtained
17 physical evidence.

18 A. From a maroon Olds Cutlass Ciera that I learned from
19 the investigation belonged to Mr. Pugh's sister, Bessie,
20 also from a maroon Cadillac Sedan de Ville that belonged to
21 Mr. Pugh, a little silver car -- I don't remember the make
22 and model -- that belonged to a Kimberly Hinton, and also
23 from a home that belonged to Cortes Renfro.

24 Q. Where is that home located; do you know?

25 A. I believe the area is Mt. Healthy. It's in Hamilton

1 County just across the line south from the City of
2 Fairfield.

3 Q. Turning your attention to the evidence that you
4 obtained from the vehicle owned by Bessie Pew, do you
5 recall what physical evidence you obtained from that
6 vehicle?

7 A. Yes, ma'am.

8 Q. What?

9 A. In particular, it was a partially torn piece of a
10 latex glove.

11 Q. Will you describe for the Court when you found that
12 and the circumstances surrounding how you came to search
13 that vehicle?

14 A. We knew what kind of vehicle we were looking for from
15 descriptions given to us by bank employees. One of our
16 officers received information that a vehicle of that type
17 belonged to a Bessie Pew and that Walter Pugh had been in
18 that vehicle. Attempts had been made to locate that
19 vehicle by talking with Mr. Pugh's ex-girlfriend. We
20 couldn't locate the vehicle. We were looking for it, and,
21 subsequently, we located that vehicle the day following the
22 robbery.

23 Q. April 25, 2002?

24 A. Yes, ma'am.

25 Q. And when you located the vehicle, where was it?

1 A. It was on Gordon Smith Boulevard, which is in the City
2 of Hamilton. Myself and Detective Cifuentes followed the
3 vehicle for probably a half hour or so. There was a female
4 black driving the vehicle, and she made a couple of stops,
5 one on Gordon Smith Boulevard to pick up two passengers,
6 and then another stop in downtown Hamilton at the One
7 Renaissance Center Building to drop off two passengers.
8 She then proceeded to a nursing home where she parked the
9 car and went into the nursing home. At that time, we
10 believed she was going into work, so Detective Cifuentes
11 and myself headed on into town to find out who the people
12 were that she had dropped off at the building downtown.

13 Q. At the time, did you know who the driver of the
14 vehicle was?

15 A. We were not positive who the driver of the vehicle
16 was. We believed it to be Bessie Pew, but at that time we
17 weren't positive.

18 Q. Okay.

19 A. When we got back into town, I received a radio
20 dispatch informing me that Bessie Pew had called our
21 detective bureau and advised that she was on her way in and
22 wanted to talk with us.

23 Q. Did she, in fact, on that day, April 25, 2002, come
24 into the police station and speak with you?

25 A. Yes, ma'am. She beat me back into the police station.

1 Q. And tell the Court what happened when she arrived.

2 A. When she arrived, I interviewed her. I asked her for
3 consent to search her vehicle, which she executed our
4 standard consent to search form. I searched the vehicle,
5 took photographs of the vehicle. And at that time I
6 located the partially torn latex glove underneath the
7 driver's seat of the vehicle. I took -- and Ms. Pew was
8 with me the whole time while we searched the car.

9 We went back in, and I interviewed her and took a
10 written statement from her. I also showed her photographs
11 that we recovered from the bank surveillance videotape, and
12 she made an identification of one of those persons in the
13 photograph.

14 Q. Who did she identify?

15 A. Mr. Walter Pugh.

16 MS. CROSS: Your Honor, if I may show the witness
17 Government Exhibit 1, which has been shown to Mr. Pugh.

18 THE COURT: Um-hum. That's fine. Do you have a
19 copy for the Court of any of these exhibits?

20 MS. CROSS: I do, Your Honor, and I'm looking for
21 a copy for the Court, Your Honor. It is attached to our
22 response which we filed.

23 THE COURT: All right. You may proceed.

24 MS. CROSS: Thank you, Your Honor.

25 BY MS. CROSS:

1 Q. Detective Calhoun, I'm showing you what has been
2 previously marked as Government's Exhibit Number 1. Do you
3 recognize that exhibit?

4 A. Yes, ma'am.

5 Q. What do you recognize it to be?

6 A. It is a copy of the original form, consent to search
7 form, that Ms. Pew and myself signed on April 25th of 2002
8 allowing me to search her '88 Olds Cutlass.

9 MS. CROSS: Your Honor, if there is no objection,
10 I would move to admit Government Exhibit Number 1 into
11 evidence.

12 THE COURT: Any objection, Mr. Pugh?

13 DEFENDANT W. PUGH: No, ma'am.

14 THE COURT: Government Exhibit 1 is admitted.

15 BY MS. CROSS:

16 Q. I believe that you stated that Ms. Pew gave you a
17 statement?

18 A. Yes, ma'am.

19 Q. And identified Walter Pugh from a photograph that you
20 showed her?

21 A. Yes, ma'am.

22 Q. During the course of your investigation, you had cause
23 to search a vehicle that was owned by Walter Pugh, correct?

24 A. Yes, ma'am.

25 Q. Will you tell -- explain to the Court how you came to

1 search that vehicle.

2 A. We were at the time looking for Mr. Walter Pugh.
3 There were warrants issued through Hamilton Municipal Court
4 for aggravated robbery and theft. The vehicle, the --
5 excuse me. The Cadillac Sedan de Ville was registered to
6 Mr. Walter Pugh, and we had received information that he
7 was in that vehicle. Specifically, we received a phone
8 call that he was in the vehicle on Front Street in
9 Hamilton, and I believe the date was May the 2nd.

10 I, immediately upon receiving that phone call, caused
11 the radio broadcast to all of our patrol units to be on the
12 lookout for the car in that area. Within five minutes, the
13 vehicle was located parked on Beckett Street near Garden
14 Street in the City of Hamilton, Ohio, unoccupied. The
15 patrol units were instructed to stay back, and I placed
16 plain clothes detectives in plain cars in the area to watch
17 the vehicle for several hours, probably two hours or so.
18 No one went to the vehicle.

19 Knowing that it was Mr. Pugh's car and receiving the
20 information that he had been in it as recently as ten, 15
21 minutes before we found it, we towed the vehicle, impounded
22 the vehicle. It was sealed. It was not opened, not
23 searched at that time.

24 While the vehicle was being towed, I returned to our
25 office, drafted an affidavit requesting a search warrant

1 for the vehicle, went to one of our common pleas judges and
2 had him review the affidavit, review the search warrant,
3 and he signed it at that time. The search on the vehicle
4 was then executed within four hours of locating the
5 vehicle.

6 Q. You said that, when you first located the vehicle, you
7 knew that it belonged to the defendant Walter Pugh?

8 A. Yes, ma'am.

9 Q. How did you know that?

10 A. The vehicle registration, license plates.

11 Q. What do you recall finding after you searched that
12 vehicle?

13 A. A black bag containing ammunition for a 12-gauge
14 shotgun, also for a 22 caliber weapon and a larger caliber
15 rifle ammunition. I'm not positive of the caliber
16 ammunition. I would have to look at it to be sure. We
17 also got a walkie-talkie out of the vehicle. There was a
18 empty box of Black & Mild cigars. There was a hotel
19 parking -- I guess you would call it a tag that hangs from
20 the rearview mirror for a hotel in downtown Atlanta. We
21 also took a paper that showed video rentals from a video
22 rental place in downtown Atlanta, Georgia.

23 Q. I believe it was your testimony that that evidence was
24 obtained as a result of execution of a search warrant?

25 A. Yes, ma'am.

1 Q. Who drafted the affidavit for the search warrant?

2 A. I did.

3 MS. CROSS: Your Honor, if I may at this time
4 have permission to show Government Exhibit Number 2 to the
5 witness.

6 THE COURT: Yes, you may.

7 MS. CROSS: Again, Your Honor, this has been
8 shown to the defendant today, and it's attached to our
9 response.

10 THE COURT: Thank you, Ms. Cross.

11 BY MS. CROSS:

12 Q. Do you recognize Government Exhibit Number 2,
13 Detective?

14 A. Yes, ma'am.

15 Q. What do you recognize it to be?

16 A. It is a three-page document containing the affidavit
17 requesting the search warrant, the actual search warrant
18 signed by Judge Bressler in common pleas court, and then
19 the return of the search warrant listing the property that
20 was taken.

21 Q. To whom did you make application to for the search
22 warrant?

23 A. Judge H. J. Bressler.

24 Q. On what day and time?

25 A. It was the 2nd of May, 2002, 5 p.m. It's barely

1 readable underneath the certification stamp from the court.

2 Q. What information did you convey to the state court
3 judge in making application for the search warrant?

4 A. The information that's listed on the affidavit itself,
5 and the judge also asked me a couple of questions about how
6 the identification of Mr. Pugh came about.

7 Q. And what information did you provide?

8 A. I told him the names of those that identified Mr. Pugh
9 via the photographs from the bank.

10 MS. CROSS: Your Honor, if there is no objection,
11 we would ask permission to move into evidence Government
12 Exhibit Number 2.

13 THE COURT: Mr. Pugh, any objection to admission
14 of the Government Exhibit 2?

15 DEFENDANT W. PUGH: Object, Your Honor.

16 THE COURT: What's the basis for your objection?

17 DEFENDANT W. PUGH: On the video ticket that he
18 said he confiscated out of my car, it's nowhere on the
19 inventory sheet.

20 THE COURT: Okay. You can bring that out if you
21 want in cross-examination of this witness, but the issue
22 here is are you objecting to the admission of the
23 affidavit, the search warrant and the return of the
24 affidavit that this witness has identified. It's just the
25 admission of the documents. It's just putting the

1 documents themselves into evidence. If you want to then
2 cross-examine the detective about why a specific item isn't
3 on the return of inventory, you need that document in
4 evidence to do that.

5 DEFENDANT W. PUGH: Yes, ma'am.

6 THE COURT: So are you still objecting?

7 DEFENDANT W. PUGH: I withdraw my objection.

8 THE COURT: All right. Then Government Exhibit 2
9 will be admitted.

10 MS. CROSS: Thank you, Your Honor.

11 BY MS. CROSS:

12 Q. Detective, did you testify that the car was impounded
13 prior to receiving the search warrant?

14 A. Yes, ma'am.

15 Q. Why was that done?

16 A. To secure the vehicle. It was parked on a city
17 street. We didn't know who had access to the vehicle, who
18 had keys, who might come back to the vehicle. We didn't
19 have resources to place a person watching it for another
20 three hours. So the vehicle was impounded for safekeeping,
21 to keep it secure and in the condition it was in on the
22 street when we found it.

23 Q. Was the vehicle searched upon being impounded?

24 A. No, ma'am.

25 Q. How long was the car impounded prior to receiving the

1 search warrant?

2 A. At the most, three, three-and-a-half hours.

3 Q. And was the information that the car had been
4 impounded communicated to the judge in making application
5 for the search warrant?

6 A. Yes, ma'am.

7 Q. Turning your attention now to the third vehicle that
8 was searched in this case, I believe you stated that was a
9 vehicle that belonged to Kimberly Hinton?

10 A. Yes, ma'am.

11 Q. Do you recall what day that search took place?

12 A. I do. It was very early in the morning on May the
13 3rd.

14 Q. Will you explain the events that took place from the
15 time that you executed the search warrant on Mr. Pugh's
16 vehicle on May 2nd, 2002, until this third vehicle was
17 searched?

18 A. We were contacted by an informant who was to lead us
19 to Mr. Pugh. The informant took us to the area where
20 Mr. Pugh was, the exact house, showed it to us. It was in
21 Hamilton County's jurisdiction, so I contacted Hamilton
22 County Sheriff's Department to coordinate with them the
23 events to surround the house. They activated their SWAT
24 team because of the nature of the crime and the warrants
25 for Mr. Pugh, and there were I don't know how many Hamilton

1 County sheriff's deputies, several Hamilton County
2 sheriff's deputies. There were three detectives -- four
3 detectives from the City of Hamilton Police Department and
4 Special Agent Moran from the FBI there. We staged in the
5 LoBill parking lot on Hamilton Avenue near the house where
6 Mr. Pugh was located on Wincanton Road.

7 The little silver vehicle owned by Ms. Hinton pulled
8 up into the house while the Hamilton County sheriff's
9 deputies were surveilling it. Two subjects exited the
10 house, got into the vehicle and were driving away. The
11 vehicle was subsequently stopped by the Hamilton County
12 Sheriff's Department. Located in the car in the rear seat
13 was Mr. Walter Pugh. In the front passenger seat was
14 Cortes Renfro, and the front driver was Kimberly Hinton.

15 Mr. Pugh was arrested pursuant to the warrants out of
16 our department or out of our municipal court. Mr. Renfro
17 was also arrested pursuant to warrants out of our municipal
18 court. And Ms. Hinton was arrested pursuant to warrants
19 through Hamilton County, City of Cincinnati, I believe.

20 Q. Okay. Upon the arrest of Ms. Hinton, did she -- did
21 anyone ask if they could search her vehicle?

22 A. Yes. Myself and Agent Moran asked if we could search
23 her vehicle. Ms. Hinton filled out, executed, a consent to
24 search right there in the LoBill parking lot, and I
25 searched the vehicle.

1 Q. When you're saying LoBill parking lot, is LoBill a
2 grocery store?

3 A. Yes, ma'am.

4 MS. CROSS: Your Honor, if I may have permission
5 to show the witness Government Exhibit Number 3.

6 THE COURT: Yes, of course.

7 BY MS. CROSS:

8 Q. Do you recognize Government Exhibit Number 3?

9 A. Yes, I do.

10 Q. What do you recognize it to be?

11 A. It is a one-page document, a consent to search an
12 automobile, signed by Kimberly Hinton and myself on May 3rd
13 of 2002, allowing me to search her 2000 Plymouth Neon.

14 Q. Is that the consent form that you were testifying
15 about that you had Ms. Hinton execute on the night of her
16 arrest?

17 A. Yes, ma'am.

18 MS. CROSS: Your Honor, if there is no objection,
19 I would move to admit into evidence Government Exhibit
20 Number 3.

21 THE COURT: Any objection, Mr. Pugh?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Okay. Government Exhibit Number 3
24 will be admitted.

25 BY MS. CROSS:

1 Q. Upon Ms. Hinton executing that consent form, what
2 happened?

3 A. I searched the vehicle.

4 Q. What, if anything, did you find?

5 A. A multi-channel scanner located in the rear passenger
6 compartment where Mr. Walter Pugh had been sitting.

7 Q. After the search of the vehicle and the arrest of all
8 three persons in the vehicle who were traveling in the
9 vehicle, what happened?

10 A. The Hamilton County Sheriff's deputies were talking
11 with Mr. Renfro, getting information, intelligence, to
12 supply to their officers about who was still in the house,
13 possible weapons, things of that nature that they would
14 need to know before making entry into the home. Because,
15 at the time, we believed that Tyreese Pugh was still in the
16 house, found out that he was indeed still in the house.
17 And the best course of action was to ask Mr. Renfro for
18 consent to search his house, the easiest way to do it so to
19 speak. And so he was asked for permission to search his
20 home, and he executed a consent to search for his home
21 located at 11979 Wincanton Drive.

22 Q. Subsequent to his -- did he consent?

23 A. Yes, ma'am.

24 Q. Subsequent to his consent, was the consent form given
25 to -- who was it given to?

1 A. It was given to me.

2 MS. CROSS: And I ask permission at this time to
3 show Government Exhibit Number 4.

4 THE COURT: Yes.

5 MS. CROSS: Which I believe is in front of the
6 witness.

7 THE COURT: All right.

8 BY MS. CROSS:

9 Q. Detective, do you recognize that exhibit?

10 A. Yes, ma'am.

11 Q. Will you tell the Court, for the record also, what
12 that is?

13 A. It's a one-page document signed by Cortes Renfro and
14 Sergeant Matthew Guy of the Hamilton County Sheriff's
15 Department allowing a search to be made of 11979 Wincanton
16 Drive.

17 Q. Is that the exhibit that you received? Is that a copy
18 of the exhibit that you received on the night of their
19 arrests?

20 A. Yes, ma'am.

21 MS. CROSS: I move to admit Government Exhibit
22 Number 4 at this time.

23 THE COURT: Any objection, Mr. Pugh?

24 DEFENDANT W. PUGH: No, ma'am.

25 THE COURT: Government Exhibit Number 4 will be

1 admitted.

2 BY MS. CROSS:

3 Q. When Mr. Renfro executed that form, what happened?

4 A. The Hamilton County Sheriff's Department SWAT team
5 entered the home. At that time, Tyreese Pugh was located
6 in bed laying on top of a 12-gauge shotgun with his
7 girlfriend Stephanie Luster.

8 MS. CROSS: If I may have a moment, Your Honor,
9 to confer with counsel.

10 THE COURT: Sure.

11 (Pause.)

12 MS. CROSS: Just a few more questions, Detective
13 Calhoun.

14 BY MS. CROSS:

15 Q. I just want to talk to you for a few minutes about the
16 ownership of each of the vehicles that you searched
17 beginning with Bessie Pew's vehicle. How did you find out
18 it was her vehicle?

19 A. Through the license plate registration, and also
20 Ms. Pew told us that it was her car.

21 Q. What did you discuss with her, if anything, as to
22 where her vehicle had been during or about the time of this
23 bank robbery?

24 A. She actually, when she came to us, told us that she
25 believed her vehicle might have been used in a bank

1 robbery. That is what she had heard on the street.

2 Q. And were there any discussions as to why she believed
3 that?

4 A. Yes, there were.

5 Q. What did she say?

6 A. We were told that her brother Walter had had her car
7 for the past three weeks approximately and that on April
8 24th he had appeared at her work telling her that he wanted
9 his car back, which she had been driving, told her that her
10 car was parked in a parking lot in the Old Apple Creek
11 Apartments, which is in Fairfield, Ohio, just south of the
12 City of Hamilton, but that her car was parked down there
13 and she could go get it.

14 Q. So, on April 24th, she returned his car to him,
15 referring to Mr. Pugh, Walter Pugh?

16 A. Yes, ma'am.

17 Q. And he had returned her car that he was using to her?

18 A. Correct. Actually, he didn't return it to her. He
19 told her where it was. She had to go retrieve it.

20 Q. Regarding the ownership of Ms. Hinton's vehicle, how
21 did you know that the vehicle belonged to her?

22 A. Again, license plate registration and the fact that
23 she told us that it was her vehicle.

24 Q. At the time that Ms. Hinton stated that the vehicle
25 that she was driving belonged to her, was the defendant

1 Walter Pugh with her?

2 A. Yes, ma'am.

3 Q. Did he hear these things?

4 A. Well, by "with her," he was in the same area. He was
5 in the rear of the Hamilton County Sheriff's Department
6 cruiser. I don't believe he would have heard the
7 conversation that we had with her.

8 Q. At any time, did Walter Pugh that night tell you that
9 that car belonged to him?

10 A. No, ma'am.

11 MS. CROSS: Your Honor, I believe that's all the
12 questions I have.

13 Thank you, Detective.

14 THE COURT: Thank you, Ms. Cross.

15 Mr. Pugh, do you wish to cross-examine this
16 witness?

17 DEFENDANT W. PUGH: Yes, ma'am.

18 THE COURT: Okay. You may proceed.

19 CROSS-EXAMINATION

20 BY DEFENDANT W. PUGH:

21 Q. Detective Calhoun, where did you get the information
22 that led you to Bessie Pew's car?

23 A. The information that -- what's her -- how did we come
24 about a --

25 Q. You said that you got the plates number. You told the

1 prosecution that you received Bessie Pew's plate number.

2 Where did you receive the plate numbers from?

3 A. No, sir, I don't believe I ever said I received the
4 plate number for Bessie Pew's car.

5 Q. So what led you to Bessie Pew's car?

6 A. One of our officers received information that you were
7 in a car matching the description of the car from the bank
8 robbery.

9 Q. Was it the Cadillac?

10 A. No, sir. It was a Olds Cutlass Ciera, maroon in
11 color.

12 Q. On the 24th?

13 A. On the 24th did I receive the --

14 Q. On the 24th of April, 2002, I was driving Bessie Pew's
15 car?

16 A. At the bank robbery, yes, sir, that was the
17 information.

18 Q. That's what an officer told you?

19 A. No. We received the information on the 25th, early
20 morning.

21 Q. Thank you.

22 THE COURT: Mr. Pugh, why don't you pull the
23 microphone a little closer? You can move it. It would be
24 more comfortable for you. Good.

25 BY DEFENDANT W. PUGH:

1 Q. And you received this information from Bessie Pew that
2 I was driving her car on the 24th?

3 A. She told me that you had her car up until the
4 afternoon of the 24th, yes.

5 Q. How could I have her car up to the afternoon on the
6 24th when you stated that I told her when I picked her car
7 up that her car was parked in Fairfield somewhere?

8 A. I don't --

9 Q. You stated that. You stated on record that Bessie Pew
10 told you I had her car all the way up to the afternoon.

11 A. Yes, sir.

12 Q. How could I have Bessie Pew car all the way until the
13 afternoon? When I came and got my Cadillac out of Bessie
14 Pew, I did not have Bessie Pew car.

15 A. She said she did not know how you got to her work, but
16 that you came to her work late in the afternoon on the 24th
17 and took your Cadillac from her.

18 Q. Detective Calhoun, concerning the Cadillac, you did a
19 search warrant for that Cadillac, correct?

20 A. Yes, sir.

21 Q. The items that you obtained according to the inventory
22 sheet, black bag containing 12-gauge shotgun shells, 22
23 ammunition and 22.3 -- .223 ammo front seat of car?

24 A. Yes, sir.

25 Q. A walkie-talkie, a Travelodge Hotel parking pass from

1 Atlanta, glove compartment, right?

2 A. Correct.

3 Q. Empty box for Black & Mild cigars, front floor,
4 correct?

5 A. Yes, sir.

6 Q. Where did this other ticket thing come from concerning
7 the video?

8 A. I believe it was on the rear seat, on the floor.

9 Q. It's not on the inventory sheet though, sir.

10 A. That is correct.

11 Q. Why is that?

12 A. I really don't know, sir.

13 Q. But you took it out of the Cadillac, right? You took
14 it out of my Cadillac, correct?

15 A. Yes, sir. I believe it's in evidence in our property
16 room.

17 Q. What else did you take out of there, sir?

18 A. I believe those were the only items.

19 Q. I see that you took out another piece of paper
20 containing that that's my car. You took out three pieces
21 of paper, correct? Atlanta, Georgia parking ticket?

22 A. For the Travelodge.

23 Q. A video slip?

24 A. Correct.

25 Q. And a piece of paper stating that's Walter Pugh's car?

1 A. I believe we may have taken your vehicle registration
2 out of the glove compartment, yes, sir.

3 Q. But it's not on the inventory sheet?

4 A. No, sir.

5 Q. But it's into evidence?

6 A. It's in our property room. As far as evidence --

7 Q. I got it on file that you --

8 THE COURT: Wait. Wait. You've got to let the
9 witness finish his answers. Okay?

10 A. As far as what is being used as evidence, I don't know
11 what exactly the prosecutor is going to use to put into
12 evidence, but the vehicle registration we took to prove
13 ownership of the vehicle.

14 Q. But I'm saying you took those items out of my
15 Cadillac. Why are they not on this inventory sheet if you
16 took them out of the Cadillac?

17 A. I have no answer for that, sir.

18 DEFENDANT W. PUGH: Excuse me for a minute,
19 Judge.

20 THE COURT: Certainly.

21 BY DEFENDANT W. PUGH:

22 Q. Sir, didn't you take an oath concerning that matter?
23 You swore to tell the truth on the matter of things that
24 you took out of that car?

25 A. Yes, sir.

1 Q. But yet you said that was all that you took, but you
2 took more items out of that car that's not on this oath
3 that you took?

4 A. Those are the items that I wrote down, sir, and I
5 believe that's all we took. I was not the only officer on
6 the search, and the items were sealed into bags. I didn't
7 know what Detective Cifuentes put in the bag other than
8 what he told me.

9 Q. But you are a professional, sir. You know the things
10 that came out of that car should have went on this
11 inventory list. You just do not take things out of
12 people's cars and it's not on the inventory list. That's a
13 violation of the Fourth Amendment, sir. Are you aware of
14 that?

15 A. If you're telling me that's a violation, sir, then
16 that's --

17 Q. That's the law, sir. You know that's the law, sir.
18 You're a law officer.

19 THE COURT: Let's not get argumentative with the
20 witness. I get your point. It's for the Court to
21 determine what's a violation of law and what's not, not the
22 witness.

23 DEFENDANT W. PUGH: I'm sorry. Thank you.

24 BY DEFENDANT W. PUGH:

25 Q. You got a search warrant -- no, not a search

1 warrant -- excuse me -- a consent form to search Mr. Cortes
2 Renfro's establishment, home, residence, correct?

3 A. At 11979 Wincanton Road, that is correct, sir.

4 Q. That consent form consists of his property, right, his
5 personal things, correct?

6 A. It allowed us to search his home, sir. He told us he
7 owned the home or the residence there.

8 Q. Did that consent form, sir, authorize you to search my
9 personal belongings, the bag?

10 A. The consent form, sir, authorized us to take any
11 letters, papers, materials or other property which is
12 contraband or may be used as evidence in criminal or civil
13 proceedings.

14 Q. His personal things. I'm talking about the bag. The
15 bag was my bag. I did not give you the consent form. I
16 did not sign the consent form. You did not have a search
17 warrant to take my bag. I'm saying that you know that
18 Walter Pugh Jr. was at that resident. I'm saying, if you
19 knew Walter Pugh, Jr. was there, you had time -- you had
20 enough time to get a search warrant. Correct?

21 A. We could have gotten a search warrant, yes, sir.

22 Q. Knowing that Walter Pugh, Jr. was there and knowing
23 that he probably has some contraband there or whatever
24 personal things, don't you think that a warrant would have
25 been reasonable?

1 A. We took what we believed at the time to be the most
2 reasonable course of action, sir.

3 Q. Why you did not ask me to search my personal
4 belongings?

5 A. We tried to talk to you, sir, but you told us you
6 would not talk to us.

7 Q. So you did not have my consent, correct?

8 A. You wouldn't talk to us at all, sir, so no.

9 Q. So you did not have my consent, right?

10 A. I answered no, sir.

11 Q. Thank you. Concerning Bessie Pew's car again, you
12 said you found a piece of latex glove. Did Bessie Pew
13 state that that was Walter Pugh's?

14 A. Bessie Pew said it was not hers.

15 Q. Did Bessie Pew say -- did she say it was Walter Pugh?
16 She said it was her car, but did she say that was Walter
17 Pugh's piece of glove?

18 A. I told you what Ms. Pew said, sir. She said it was
19 not hers.

20 Q. So it wasn't Walter Pugh, right?

21 A. I cannot say that, sir.

22 DEFENDANT W. PUGH: Excuse me.

23 THE COURT: Certainly.

24 DEFENDANT W. PUGH: Thank you, Mr. Calhoun.

25 THE COURT: Anything further, Mr. Pugh?

1 DEFENDANT W. PUGH: No, ma'am.

2 THE COURT: All right. Anything further of this
3 witness, Ms. Cross?

4 MS. CROSS: Your Honor, just two follow-up
5 questions if I may.

6 REDIRECT EXAMINATION

7 BY MS. CROSS:

8 Q. Detective Calhoun, at the time that the consent for
9 Mr. Renfro's home was obtained, was Tyreese Pugh a
10 fugitive?

11 A. Yes, ma'am.

12 Q. And did you have any knowledge or information as to
13 whether or not Mr. Tyreese Pugh was in the home?

14 A. Walter Pugh told the sheriff's deputies that his son
15 was in the home and that he was concerned for his safety.
16 Should we go in the home and there be problems, I guess
17 that's what he was worried about.

18 MS. CROSS: Thank you.

19 No further questions, Your Honor.

20 THE COURT: Mr. Pugh, anything further of this
21 witness?

22 RECROSS-EXAMINATION

23 BY DEFENDANT W. PUGH:

24 Q. Excuse me. Mr. Calhoun, my attorney just brought to
25 my attention that you stated earlier that I didn't have no

1 conversation for you, but then you just stated that we had
2 conversation.

3 A. No, sir. I said you wouldn't talk to me. You did
4 talk to the Hamilton County Sheriff's deputies about your
5 son being in the house.

6 Q. Sir, the only one that I spoke to is you and the FBI
7 agent. I did not speak to no Hamilton County sheriffs.

8 A. That was not the information that was provided to me,
9 sir.

10 DEFENDANT W. PUGH: Thank you, sir.

11 Thank you, Judge.

12 MS. CROSS: No further questions, Your Honor.

13 THE COURT: Thank you, Detective Calhoun. You
14 are excused.

15 Any additional witnesses for the government,
16 Ms. Cross?

17 MS. CROSS: No, Your Honor.

18 THE COURT: All right. Thank you.

19 Mr. Pugh, do you wish to present any evidence?

20 THE DEFENDANT: Not at this particular time,
21 ma'am.

22 THE COURT: All right. Then the Court will take
23 this matter under submission. I'm going to ask -- you're
24 going to provide a legal memo to us by August 28th?

25 DEFENDANT W. PUGH: Yes.

1 THE COURT: Mr. Pugh, you're welcome to do that.
2 I will tell you at this point, though, that my inclination
3 is to deny the motion to suppress just because I want you
4 to have notice of adequate time to prepare for trial,
5 because this matter is set for trial September the 3rd,
6 which is, I think, about a week and a half away. Yes.
7 We're looking at about ten days, something like that.

8 So, you know, subject to my seeing something in
9 your memo that I haven't thought of, it's likely that I
10 will deny the motion to suppress, and the trial will go
11 forward on the 3rd.

12 So I guess at this point we're going to have the
13 final pretrial conference. Does anybody need a break
14 before we start that?

15 MS. CROSS: No, Your Honor.

16 THE COURT: Anybody want a break? All right.
17 Then let's talk.

18 MR. FELSON: Your Honor, I'm sorry. Tyreese says
19 he needs a bathroom break.

20 THE COURT: All right. Let me ask Mr. Riley, how
21 long do you need for a break?

22 DEPUTY MARSHAL RILEY: Ten minutes.

23 THE COURT: All right. Let's take a ten-minute
24 break.

25 (Recess at 2:25 p.m.)

1 AFTER RECESS

2 THE COURT: All right. I have to find my little
3 checklist here. All right. Let's start with counsel.
4 Who's going to be sitting at counsel table, and who's going
5 to be representing the U.S? You, Ms. Cross?

6 MS. CROSS: Mr. Thapar and I are co-counsel, and
7 Special Agent Terry Moran of the FBI.

8 THE COURT: Okay. And, Mr. -- I'm trying to
9 think of how we can refer to you. I know that you're
10 Walter Pugh, Jr., and you're Tyreese Pugh. Do you have
11 a -- are you junior, too?

12 DEFENDANT T. PUGH: No, I'm senior.

13 THE COURT: Okay. It's reversed.

14 I'm trying to think, for purposes of the record,
15 would you like me maybe to explain to the jury at the
16 beginning, maybe when you're doing voir dire, when we are
17 picking the jury, that you are father and son, and, even
18 though you're Walter Pugh, Jr. and you're Tyreese Pugh,
19 Sr., that's to differentiate so I don't have to say
20 Mr. Walter Pugh and Mr. Tyreese Pugh every time? I could
21 do that.

22 Would you like me to do that? I could refer to
23 you as Mr. Pugh the elder or Mr. Pugh, Sr. and Mr. Pugh.
24 What would you like? How would you like --

25 DEFENDANT T. PUGH: Tyreese Pugh.

1 THE COURT: Just want to -- just Tyreese Pugh?

2 DEFENDANT T. PUGH: Okay.

3 THE COURT: I could say Tyreese Pugh or Walter
4 Pugh.

5 DEFENDANT T. PUGH: Pugh the son and Pugh the
6 father.

7 THE COURT: Mr. Pugh, the father?

8 DEFENDANT W. PUGH: Yes, ma'am.

9 THE COURT: Okay. Mr. Pugh the father.

10 MR. FELSON: Judge, I think I'm a little more
11 comfortable with Tyreese Pugh, because I'm trying to --

12 THE COURT: Separate. Okay. I hear you.

13 MR. FELSON: Tyreese Pugh would be fine.

14 THE COURT: All right. I'll just say Mr. Walter
15 Pugh and Mr. Tyreese Pugh.

16 What I want to do is, if somebody looks at the
17 transcript later, they're not going to know which one of
18 you I was referring to unless I use something to
19 differentiate you. So we'll do it that way. Okay.

20 Mr. Felson, you're representing Tyreese Pugh.

21 And, Mr. Andrews, you're going to be standby
22 counsel for Walter Pugh.

23 MR. ANDREWS: That is correct, Your Honor.

24 THE COURT: Let me just, even though, as you all
25 know, the Court can't be involved in any plea negotiations,

1 I just wanted to inquire as to whether or not there is a
2 possibility that there might be any pleas or whether this
3 is definitely going to trial.

4 MS. CROSS: Your Honor, I believe at this point
5 it's definitely going to go to trial. There are no plea
6 offers that have been extended.

7 THE COURT: All right. Does the government
8 intend to make any?

9 MS. CROSS: Well, actually, Your Honor, there was
10 one offer made to Mr. Tyreese Pugh, but it's been rejected.
11 So there is no additional offers at this time.

12 THE COURT: Okay. Then there is no more motions
13 to be filed. The motion deadline has past.

14 Let me talk about, though, some other deadlines.
15 Exhibit lists and witness lists, those are submitted to the
16 Court, only those don't get filed with the clerk's office.
17 The Court would like those lists, the exhibit lists and the
18 witness lists, this Friday, which is six business days
19 before trial. Is that doable for everyone?

20 MS. CROSS: Yes, Your Honor.

21 MR. FELSON: Yes, Your Honor.

22 THE COURT: All right. And I'll get into that in
23 a minute how I would like you to mark your exhibits, too.
24 Why don't I do that now so I don't forget?

25 Give me an idea of how many exhibits the

1 government has.

2 MS. CROSS: Your Honor, the government has 22
3 exhibits, and, for example, Exhibit 1 has eight parts to
4 it.

5 THE COURT: Okay.

6 MS. CROSS: But the number is 22.

7 THE COURT: All right.

8 MS. CROSS: Because Number 1 are basically
9 photographs.

10 THE COURT: Okay. I think --

11 And then what about, Mr. Felson, how many
12 exhibits?

13 MR. FELSON: Actually, we have our witness
14 Dr. Fulero, the identification witness I discussed, is
15 probably going to have a curriculum vitae, and he may have
16 a couple of exhibits, but, other than that, we have a
17 notice of alibi we're going to file; although it's a little
18 vague, because it's hard to pin down, you know, since they
19 arrested him sometime later, to find out exactly where he
20 was two weeks earlier at a specific time is kind of
21 difficult for a 20, early 20's year old gentleman. So we
22 did want to make a point to say we are asserting an alibi
23 that he wasn't there, although we may not be able to say
24 exactly where he was at that particular time a couple weeks
25 earlier, but I want to make that clear.

1 I don't know if the Court requires a notice of
2 alibi in that instance. I'm putting the state on notice
3 now that we're claiming we weren't there. And I think they
4 knew that.

5 THE COURT: Ms. Cross?

6 MS. CROSS: I think that the defense has an
7 obligation to file something in the record about the alibi
8 defenses. We were not formally -- we didn't formally know
9 that he was going to raise that defense, although we
10 suspected.

11 THE COURT: Let me take a look at the federal
12 rules.

13 MR. FELSON: Is my position clear on that, Your
14 Honor? In other words, he can't exactly say where he was
15 at that moment, since he was arrested sometime later.

16 THE COURT: No. I hear you. But I think there
17 is a federal rule about alibis. I think it's 12.

18 MS. CROSS: Rule 12.1, I believe, Your Honor.

19 THE COURT: Yes. Let's see what that says here.
20 Do you have a copy of the rule in front of you, Ms. Cross?

21 MS. CROSS: I do, Your Honor.

22 THE COURT: Yes. The Court does, too.

23 I would like to hear from you, how you feel the
24 rule applies to what Mr. Felson just said.

25 MS. CROSS: Actually, Your Honor, he does not

1 have an obligation unless we provide a written demand for
2 notice, which we have not.

3 THE COURT: All right. Okay. And I assume,
4 Ms. Cross, that what you're saying, and correct me if I'm
5 wrong, that, if the government doesn't make a written
6 demand, then the defendant is not obligated to respond, in
7 which point Rule 12.1(b) is not applicable, correct?

8 MS. CROSS: That is correct, Your Honor. That's
9 my reading.

10 THE COURT: Okay. Mr. Felson?

11 MR. FELSON: So I just won't -- I won't have to
12 file anything?

13 THE COURT: Right. You don't have to file
14 anything. What I'm saying here is that under Rule 12.1(b),
15 notice of alibi, here under the federal rules, it says that
16 within ten days thereafter, but in no event less than ten
17 days before trial, unless the Court otherwise directs, the
18 attorney for the government shall serve upon the defendant
19 or the defendant's attorney a written notice stating the
20 names and addresses of the witnesses upon whom the
21 government intends to rely to establish the defendant's
22 presence at the scene of the alleged offense and any other
23 witnesses to be relied on to rebut testimony of any of the
24 defendant's alibi witnesses.

25 So I think what Ms. Cross or I believe what

1 Ms. Cross and I just said is that the government has no
2 obligation to do that if you don't have an obligation to
3 serve them with written notice. I just want to make sure
4 everybody is clear on that.

5 MR. FELSON: Oh, okay. Well, let me put it this
6 way. We are -- I mean, I can do that in writing, but
7 obviously implicit in the defense of not guilty is, I
8 guess, well it could be different defenses, but he wasn't
9 there. That implies an alibi, except that an alibi seems
10 required to be evidence that you were somewhere else. In
11 other words, you're saying you were somewhere else as
12 opposed to there. But that's not what we're really saying,
13 because we don't know where he was a week or two weeks
14 before he was arrested.

15 THE COURT: You're saying your alibi was he was
16 not at the bank when it was robbed.

17 MR. FELSON: That's right. He was not there.
18 Now, if they're going to have witnesses that they're going
19 to submit to me that are going to testify -- I guess try to
20 testify that he was there at the bank, and so they would
21 still have to provide me that witness list.

22 THE COURT: In federal court, they don't have to
23 provide a witness list in criminal cases. What they --
24 what we do have is pretty liberal discovery as a practice
25 here in the Southern District of Ohio, and I assume that

1 you have already had that discovery.

2 MS. CROSS: We have, Your Honor. And, in fact,
3 out of an abundance of caution, we have sent Mr. Felson a
4 letter regarding the specific witness that will put
5 Mr. Tyreese Pugh in the bank.

6 MR. FELSON: All right. I think it's just
7 semantics here, and we're all on the same page. I have got
8 my witness list. I requested it, and et cetera. I just
9 want to make sure there is nothing I'm missing here.

10 THE COURT: All right. That's fine. So the
11 Court would like the exhibit lists, the witness lists by
12 Friday, but you don't have to serve them on the other side.
13 The government can go ahead and use numbers, and, where you
14 have got subparts to the numbers, then you can just use
15 letters like 1-A, B, C, D, something like that.

16 With regard to the defendants, Mr. Felson, it
17 sounds like you're going to have, what, under five
18 exhibits?

19 MR. FELSON: That's probably right.

20 THE COURT: Why don't I have you -- then why
21 don't you take -- why don't I have you take numbers 1
22 through 9, or actually I'm going to have you do letters.
23 I'm sorry. Let me have you do letters. Why don't we have
24 Tyreese Pugh will be letters. So you will start with A,
25 and then, if there are subparts to any of your exhibits,

1 you will go like A-1, 2, 3 whatever.

2 And Mr. Walter Pugh, are you going to have any
3 exhibits?

4 DEFENDANT W. PUGH: Yes, ma'am.

5 THE COURT: Do you have any idea of the number,
6 just approximately, so I can figure out?

7 DEFENDANT W. PUGH: Twelve.

8 THE COURT: About 12?

9 DEFENDANT W. PUGH: Yes, ma'am.

10 THE COURT: Okay. Why don't we have you -- oh, I
11 know what we can do. Here's what we'll do. I have got
12 this all figured out. Why don't we have -- let me ask
13 this. Who's going to be going first in the order of
14 defenses? Normally, one defendant goes first and then the
15 second defendant. It usually goes in the same order. In
16 other words, somebody takes the lead.

17 Have you decided between you which defendant is
18 going to go first?

19 MR. FELSON: Well, we haven't discussed that.
20 I'm assuming we're going to discuss that later today or
21 within -- before Friday we're going to have that answer.
22 My guess is that, in one sense, I sort of want to go
23 second, but, on the other hand, I maybe understand for
24 practical reasons I ought to go first.

25 THE COURT: I will leave it to you. Yes, I think

1 it might be easier if you go first, but that will be your
2 decision who is.

3 Let me suggest this. Since it sounds like, well,
4 whoever decides to be the first defendant to question, why
5 don't you take A through Z? And why don't we have the
6 second defendant for their exhibits use double A, double B,
7 double C. So we will know that anything with a letter on
8 it are the defendant's exhibits, and that's how we will
9 know the difference between one defendant and the other
10 defendant. One of you will be A through Z, and the other
11 will be double A, double B, double C for your exhibits.
12 Okay?

13 All right. The Court also wants, if you have any
14 proposed jury instructions or any proposed voir dire
15 instructions or any trial briefs, the Court would like
16 those as well this Friday.

17 With regard to the jury instructions, the Court
18 uses Sixth Circuit Pattern Instructions first. If they're
19 not in the Sixth Circuit pattern instructions, then the
20 next thing we look at would be Sixth Circuit case law and
21 Devitt and Blackmar, which now has a new name, but the set
22 of federal pattern jury instructions. So, if you have any
23 proposed jury instructions, we would like those by this
24 Friday as well. And this Friday is August 23rd.

25 If you have trial briefs, and they're not at all

1 necessary, but if you wish to file a trial brief, it would
2 be helpful to have it this Friday, but I'll allow you to
3 file it up to the day of trial if you want to file that
4 later.

5 The Court intends to do all the voir dire. In
6 other words, the Court's going to question all the
7 prospective witnesses. I'll try -- I'll cover things in
8 general with the jury like, you know, any reason why they
9 feel they can't serve, if they have ever been the victim of
10 a crime, you know, and if that would influence their
11 decision in any way, sort of general questions. And then,
12 if there are any specific questions you would like the
13 Court to ask the prospective jurors, I would like you to
14 submit those to me in writing by this Friday.

15 Do you understand what I'm saying, Mr. Walter
16 Pugh?

17 DEFENDANT W. PUGH: Yes, ma'am.

18 MR. FELSON: Would it be possible to have until
19 Monday on these?

20 THE COURT: Yes, Mr. Felson, you may have until
21 Monday. Is that just for the proposed voir dire
22 instructions, or you want on jury instructions, too? You
23 want it on everything?

24 MR. FELSON: Whatever you can muster, I would
25 love to have this weekend.

1 THE COURT: Why don't we do it for everything,
2 for everybody? Let's go to Monday, because I would rather
3 have something that you had time to -- adequate time to
4 prepare. So everything will be due Monday, the 26th, that
5 I have talked about, the exhibit lists, the witness lists,
6 proposed jury instructions, trial briefs if you have any,
7 and I'm not saying that the Court needs them. I don't
8 think we do, but, if you wish to file one, you can file it
9 then, and any proposed voir dire instructions.

10 And attached to the criminal trial procedure
11 are -- I think that is where we have got our list, Mike, of
12 questions?

13 Yes. We have got a list of questions that we
14 generally ask. So you can review that. And then, if there
15 are things in addition to that that you would like the
16 Court to ask, if you would submit that list to us, that
17 would be helpful.

18 One more thing with exhibits. For the
19 government, I don't know if the defendant is going to be
20 able to -- I know Mr. Felson, you will be able to make
21 copies of your exhibits.

22 And, Mr. Andrews, would you assist Mr. Walter
23 Pugh in making copies?

24 MR. ANDREWS: We have discussed that already, and
25 Mr. Pugh is going to provide. There are a couple of

1 exhibits which I'm going to have to get for him. We were
2 then going to put them together in a three-ring binder. It
3 will be in his handwriting, but still bound.

4 THE COURT: What the Court would like to have
5 from all parties is either an original or set of copies for
6 the witness, a set for the Court, and a set for my law
7 clerk. So we are talking about three sets altogether. And
8 if you will have those marked ahead of time and if you need
9 exhibit stickers, my courtroom deputy can provide you with
10 those. If you will have all that marked, and then you
11 won't need to ask, as the government did today, to hand a
12 particular exhibit to the witness. They will already have
13 it. So all you have to do is say to the witness, you know,
14 I would like to direct your attention to what's been marked
15 as Exhibit A. Can you identify that? And then you have
16 the witness identify it. If the witness then identifies it
17 and you want to move for its admission, then you will ask
18 the Court to admit it. And I think that will cut down on
19 the cumbersomeness of getting exhibits in.

20 Any questions on any of those things?

21 All right. Then let's go on to pending motions.
22 Defendant Tyreese Pugh currently has two motions pending,
23 one for discovery and bill of particulars, and two for
24 additional discovery. Defendant Tyreese Pugh's motion for
25 discovery asks disclosure of all statements of witnesses

1 and the co-defendant background information on witnesses,
2 police records and recordings regarding the crime, as well
3 as any Brady or Jencks Act material that has not yet been
4 disclosed.

5 MS. Cross, where are we on that motion, those two
6 motions?

7 MS. CROSS: Your Honor, we have provided all the
8 discovery to which the defendant is entitled. We have also
9 provided over what probably isn't Brady, but we were trying
10 to be very cautious and did provide information that we
11 thought was Brady to Mr. Pugh. I think everything has been
12 provided.

13 THE COURT: To Tyreese Pugh?

14 MS. CROSS: Tyreese Pugh.

15 THE COURT: What about Jencks Act material, has
16 that already been provided as well?

17 MS. CROSS: That has not been provided, Your
18 Honor, but we will provide it the day before trial or
19 whatever the Court's standard order is.

20 THE COURT: All of it the day before trial for
21 all your witnesses.

22 MS. CROSS: For the next day?

23 THE COURT: So you will provide it the day before
24 for the witnesses.

25 MS. CROSS: That's coming up the next day.

1 THE COURT: Half a day, great.

2 And, Walter Pugh, what about you, do you have any
3 idea the number of witnesses you might have, if any?

4 DEFENDANT W. PUGH: Not at this particular time,
5 Judge.

6 THE COURT: Okay. All right. After the first
7 morning of trial, the first morning we will start at 9:30.
8 Once we have the jury selected, then we will start at 9
9 o'clock on subsequent mornings.

10 We need to do an order of trial, so if you will
11 let -- if, Mr. Andrews and Mr. Felson, you will advise my
12 law clerks what the order is going to be by this Friday,
13 that will be helpful to us.

14 MR. FELSON: We can do that.

15 MR. ANDREWS: Your Honor, in talking to my
16 client, I just need some reassurance. He would, and I
17 think this is what Mr. Felson was saying earlier, in the
18 order of handling witnesses, et cetera, my client would
19 like to go second.

20 I believe Mr. Felson expressed a preference for
21 going first. His only reassurance that he wants was that,
22 if Mr. Felson cross-examined the witness, he himself could
23 cross-examine the witness as well. I just reassured him of
24 that. He has absolutely no problem with that and is
25 comfortable with what he's saying. That would hopefully

1 The government said they don't even intend to
2 call Mr. Dixon, so I think, Mr. Pugh, it may not be any
3 legal issue for you at all.

4 DEFENDANT W. PUGH: Yes, ma'am.

5 THE COURT: Okay. All right. Trial is going to
6 take place in this room. We will start the first morning
7 at 9:30 with jury selection.

8 Do we have any idea on length of trial?

9 MS. CROSS: Your Honor, we believe that the
10 government's case will take two days' proof.

11 THE COURT: Okay. And, Mr. Felson, what about
12 any idea on the defense's case yet?

13 MR. FELSON: Two witnesses that I know of. The
14 defendant may take the stand. We haven't decided yet. We
15 will make that decision last minute.

16 THE COURT: That is in addition to the two
17 witnesses?

18 MR. FELSON: In addition to the two, yes.

19 THE COURT: Okay. So are yours short or long
20 witnesses?

21 MR. FELSON: Well, the identification witness, I
22 don't think he's going to be more than an hour. I can't
23 imagine that. But that depends on the cross, but I don't
24 think I'll need him for more than an hour. So I may be
25 done in less than half a day.

1 THE COURT: All right. That's agreeable to the
2 Court.

3 Anything you wish to say in that regard,
4 Mr. Felson?

5 MR. FELSON: No, Your Honor. I have no reason to
6 believe that there is anything else.

7 THE COURT: Then Defendant Walter Pugh also has
8 two pending motions, one for the suppression of evidence,
9 which we heard today, and, two, an in limine motion to
10 exclude evidence of prior bad acts or incarceration.

11 The Court is going to address the suppression
12 motion in a separate order that will be filed after I
13 receive Walter Pugh's memo of law next week.

14 With regard to Walter Pugh's motion in limine, it
15 asks that any prior bad acts evidence Under Federal Rule of
16 Evidence 404(b) be excluded, including testimony for a
17 Mr. Dixon, that he met Defendant Walter Pugh in prison.
18 The government has responded that it does not intend to
19 introduce any evidence under rule 404(b) and does not know
20 of or intend to call a Mr. Dixon.

21 The Court does not intend to rule on the motion
22 in limine at this time, because the Sixth Circuit
23 discourages us from doing that until it arises in the
24 evidence. But it sounds to me like it may never arise in
25 the evidence.

1 help the Court.

2 THE COURT: The only thing I ask is that you
3 don't cover the same cross-examination. I don't want you
4 to do the identical cross-examination Mr. Felson did, but
5 anything that you have additional to that is fine. You
6 certainly have a right to cross-examine as well, Walter
7 Pugh. Okay?

8 DEFENDANT W. PUGH: Thank you.

9 THE COURT: All right. Then Tyreese Pugh's
10 counsel will go first, and then Walter Pugh.

11 Do the parties want separation of witnesses,
12 which means that -- do you want witnesses excluded from the
13 courtroom if they're not testifying at that time?

14 MR. FELSON: Yes, on behalf of Tyreese.

15 THE COURT: All right. Then we will have a
16 separation of witnesses.

17 Do you anticipate any stipulations? That means
18 facts that you all agree upon.

19 MS. CROSS: We have not had any agreement or even
20 any decision on stipulations at this point, Your Honor, but
21 two areas that -- two issues would be FDIC could be
22 stipulated to, as well as Mr. Tyreese Pugh's prior
23 conviction. He's charged in one of the counts as being a
24 felon in possession of a firearm.

25 THE COURT: Okay. Well, I will leave that to you

1 to negotiate. If you want --

2 Do you know what a stipulation is, Mr. Pugh?

3 MR. ANDREWS: Actually, Mr. Walter Pugh and I
4 have discussed the stipulation as to the federal insurance,
5 FDIC. My client looked at me and candidly said what bank
6 isn't, and I said very few since the mid-1980's in Ohio,
7 which, even where he was in the mid-1980's, he knows. So
8 we will stipulate that it was a federally insured bank; is
9 that correct, Walter?

10 DEFENDANT W. PUGH: Yes, sir.

11 MR. ANDREWS: That was our decision.

12 THE COURT: And Mr. Felson with Tyreese Pugh as
13 well?

14 MR. FELSON: Yes.

15 THE COURT: What I require is that there be a
16 written pleading captioned "stipulation" setting forth what
17 the stipulation is, signed by all counsel or, in this case,
18 Mr. Felson, Ms. Cross and Mr. Walter Pugh, so we have that
19 for the record.

20 MS. CROSS: Yes, Your Honor.

21 THE COURT: And believe it or not, Mr. Walter
22 Pugh, when I was an assist U.S. attorney back in the '70s,
23 we did have to prove that in those days, and we actually
24 had to get the certificate off the wall of the bank and
25 bring a bank officer in to testify that they were in fact

1 an FDIC bank. I'm glad it's a little easier these days.

2 Okay. Opening statements, how long would
3 everyone like for opening statements?

4 MS. CROSS: Mr. Thapar is going to do opening,
5 and he says 20 minutes.

6 THE COURT: Okay. Mr. Felson?

7 MR. FELSON: We both -- I think Mr. Walter Pugh
8 just said that I can do the opening. So I'll do it for
9 both of us. I don't think that's appropriate. We can both
10 do them, I think.

11 THE COURT: You can both make opening statements.

12 MR. FELSON: I only need about ten minutes for
13 Tyreese. Certainly wouldn't need much more than that.

14 THE COURT: And, Walter Pugh?

15 DEFENDANT W. PUGH: Ten to 15 minutes, Your
16 Honor.

17 THE COURT: Okay. That's fine. That will be
18 fine. Any other problems anybody is anticipating that we
19 ought to discuss now? All right.

20 DEFENDANT W. PUGH: Yes.

21 THE COURT: Okay?

22 DEFENDANT W. PUGH: Far as me being able to
23 participate in my legal process, Judge, Your Honor, I would
24 like the Court to know I'm in administrative segregation,
25 and I don't know why. I filed a grievance, and nobody told

1 me nothing. They won't even answer me when I talk to them.
2 I been on this ever since June 20th.

3 And then I'm doing my legal work. I constantly
4 work on my legal work, and I'm shook down four times a day.
5 They come in and go through my stuff. Then I have to go
6 right back over it, start over again and sort it out. And
7 I have constant legal work. This is constant.

8 I have been in administrative segregation for 60
9 days now. Nobody told me nothing. I come out for an hour,
10 one hour law library and one hour for a shower and
11 whatever. That's it. When I travel, they shackle me down.
12 They call me Hannibal on "Silence of the Lambs," Hannibal.
13 That's how they keep me. Then, every four to five days,
14 they move me. Every four to five days, I'm packing up,
15 moving. I been in the whole system in the Justice Center,
16 the whole north side, south side, every cell. That's a
17 problem.

18 THE COURT: I think the only thing I can maybe do
19 something about, again because I don't control the Hamilton
20 County Justice Center and neither does the marshal, is to
21 preserve the integrity of your papers.

22 Mr. Riley, can we talk to the jail about that and
23 make sure that his papers are kept intact, his legal
24 research?

25 DEPUTY MARSHAL RILEY: Certainly, Your Honor. I

1 know they have been allowing him access to the law library
2 and his legal documents.

3 One thing I would like to bring up at this point
4 is clothing for the defendants.

5 THE COURT: Thank you. I was going to ask that.

6 DEPUTY MARSHAL RILEY: Counsel needs to provide
7 that clothing at the jails at least on Friday before,
8 because we have a holiday on that Monday.

9 THE COURT: Okay.

10 MR. ANDREWS: Actually, Walter Pugh and I have
11 already discussed his clothing, and I don't understand the
12 cutoff day of Friday.

13 DEPUTY MARSHAL RILEY: We have a holiday the day
14 before trial.

15 MR. ANDREWS: I'm glad you brought that up as for
16 him being moved. All that is, within my experience of
17 seeing him, true. And I do know that, when I go see my
18 client, I'm also -- my briefcase has been gone through
19 every time. And, as you know, I'm in the Justice Center
20 probably as regularly as any other attorney in Hamilton
21 County. This is the only client I have ever had where they
22 do that.

23 We have asked for an explanation. The best we
24 can get is somebody at some time heard some rumor that I
25 was bringing a gun to Mr. Pugh, which I think can go under

1 the patently absurd doctrine, but that's all we have ever
2 been told. And I heard that by way of rumor.

3 He is going through some problems with that. If
4 the Court can intervene in any way, that would be helpful,
5 particularly on the use of his time in the very small legal
6 library they have there would be helpful.

7 THE COURT: All right. Mr. Riley, can you see
8 what you can do about that? I would like to increase his
9 time in the law library for sure and preserve the integrity
10 of his documents.

11 DEPUTY MARSHAL RILEY: (Nodding affirmatively.)

12 THE COURT: Will you let the Court know, tomorrow
13 or Friday?

14 DEPUTY MARSHAL RILEY: (Nodding affirmatively.)

15 THE COURT: Thank you. Oh, Mr. Riley, before you
16 came in, I brought up the issue with the defendants about
17 stun belts and in place of leg irons, and I guess -- do you
18 want any more explanation from the marshal about that?

19 DEFENDANT W. PUGH: Me?

20 THE COURT: Yes, either one of you.

21 DEFENDANT W. PUGH: I would like to see the
22 instruction on the belt. I would like to read it.

23 THE COURT: See what it is?

24 DEFENDANT W. PUGH: Yes.

25 THE COURT: Is that possible, Mr. Riley?

1 DEPUTY MARSHAL RILEY: I don't know what he's
2 referring to. We notify them before the stun belt is
3 placed. We have a list of instructions that they're
4 notified on, on when the belt will be activated, what is
5 expected of them while they're wearing it, and they have
6 the opportunity to read that, and we ask them to sign it at
7 that time.

8 THE COURT: Okay.

9 MR. ANDREWS: And this is a belt that will send a
10 shock through him if he does something like head for the
11 door?

12 DEPUTY MARSHAL RILEY: Correct.

13 DEFENDANT W. PUGH: Raise my hand.

14 MR. ANDREWS: As long as he is acting as his own
15 attorney, there is no problem.

16 DEPUTY MARSHAL RILEY: Correct.

17 MR. ANDREWS: There is a list of things that he
18 will know.

19 DEPUTY MARSHAL RILEY: It's rather explicit when
20 we will activate it.

21 THE COURT: So I'll leave that to the defendants
22 to work out with the marshals if there are any questions
23 about that.

24 Okay. Let me talk about selecting the jury.
25 Normally, in a criminal case, in a single-defendant case,

1 the defendant has ten preemptory challenges and the
2 government has six.

3 Do you know what a preemptory challenge is,
4 Walter?

5 DEFENDANT W. PUGH: Excuse me?

6 THE COURT: Do you know what a preemptory
7 challenge is? Let me talk about challenges in general.
8 When you have a jury, a prospective jury, a panel, there
9 are two kinds of challenges, two reasons you can throw
10 people off of the panel. One is that they have got some
11 kind of bias or reason that they can't sit and be a fair
12 and impartial juror. They might say, you know, I just
13 believe if the government indicts somebody they must be
14 guilty. That person can't serve, because they have a bias
15 against any defendant. So the Court would excuse that
16 person, would not allow that person to sit.

17 Once we have gone through the panel for those
18 kind of people, people who can't be fair and impartial, and
19 we have excused all of them, or people who say I'm going to
20 have surgery tomorrow and I can't be here, there is some
21 kind of excuse like that, once we have excused all those
22 folks, then the people who are remaining you have a right
23 to excuse or if you -- if it's one defendant, you would
24 have the right to excuse ten people for any reason or no
25 reason at all. You don't have to give the Court a reason.

1 You can just ask that they be excused. The government can
2 do that with six people.

3 My question for you is, since we have two
4 defendants, you could have a larger number of people
5 excused if you want, in which case the government's
6 challenges, the government's -- these are called preemptory
7 challenges, the ones that you can excuse both for no reason
8 or any reason at all. Is ten an adequate number for you,
9 or do you want that increased, in which case the
10 government's challenges will also increase?

11 MR. FELSON: I'll respond to Tyreese. Ten would
12 be sufficient.

13 DEFENDANT W. PUGH: Ten.

14 THE COURT: All right, fine. Then we will go
15 with ten challenges for the defendants jointly and six
16 challenges for the government.

17 As I mentioned to you, the Court is going to
18 conduct the voir dire. If you have questions that you
19 would like me to ask the panel, please submit those to me
20 in writing by Monday, and as long as there is not something
21 objectionable in them, I will be glad to ask the panel
22 those questions.

23 In addition to that, you're entitled to get juror
24 questionnaires, and those will be available about the
25 middle of next week. You can get these -- your counsel and

1 Mr. Andrews can obtain those from the jury commissioner,
2 Linda Wilmoth. I think they're generally available on
3 Tuesday or Wednesday, and I guess we need to figure out --
4 I'm trying to think what do we do when we have people in
5 jail that are acting as their own counsel? I know we take
6 a lot of the information -- we take the names of the
7 prospective jurors out, and I believe we take out their
8 addresses, but you know about their educational background,
9 their age, their marital status, their employment history.
10 So you have got a pretty good idea who these folks are, you
11 know, what kind of folks they are.

12 What I would like you to do is refer to them by
13 number. If you have any questions about them, I'll refer
14 to them by number, and I'll ask you to do that. The
15 morning of trial, you will be given a list of the numbers,
16 of the people's numbers, and they will be seated in the box
17 in order of their numbers.

18 Steve, how are we going to do that now that we
19 have a bigger box? Which way do you number from, the front
20 row first or back row? Left to right? Left to right.

21 So the front row will be one to six. The back
22 row will be seven to 14. And then the remaining people,
23 about how many more will we have, about 16 more or so? We
24 will have a total 40 people so we will have 26 more in the
25 back behind you, and they will be sitting in order. So, in

1 other words, if number 14 is here, then seated behind
2 Walter Pugh will be number 15 and go 15 through whatever,
3 and then all the rest in those rows so that you know who is
4 who.

5 Any questions on that?

6 DEFENDANT W. PUGH: Excuse me.

7 THE COURT: Go ahead. Do you want to talk for a
8 minute? That's fine.

9 (Defendants and counsel confer off the record.)

10 MR. ANDREWS: Thank you, Your Honor.

11 THE COURT: Once the questioning of the
12 prospective panel is completed, I'll excuse all the
13 prospective jurors, and I'll ask you -- I'll tell you first
14 who all I'm going to excuse for cause, who I find can't be
15 a fair or impartial juror or can't sit for some health
16 reason or whatever. Then I'll ask both -- I'll ask all
17 parties if you have any additional challenges for cause,
18 anybody that I haven't excused for cause for a reason that
19 they can't be fair and impartial that you believe should be
20 excused for that reason.

21 Once we have completed all the challenges for
22 cause, then we will start doing the preemptory challenges.
23 And the way we do the preemptory challenges is we start
24 with the defendant. It goes defendant, government, and the
25 defendant gets two challenges first, then the government

1 one, defendants two, government one, until we get down to
2 an even number that are left, and then from then on it's
3 defendant one, government one until you both have used up
4 all your challenges.

5 You can challenge the jurors in any order you
6 want. It doesn't have to be the first 14. If you want to
7 start with number 16, that's fine, and then excuse number
8 two, that's fine. You go in numerical order back and
9 forth. I don't care. They don't have to be the people
10 just in the box. They can be the people behind the rail.
11 You can do it in any way you want.

12 Are there any questions on the challenges?

13 DEFENDANT W. PUGH: No, ma'am.

14 THE COURT: Did I miss anything? All right.
15 Once we have -- everyone has used up all of their
16 challenges, we will take a recess. My courtroom deputy
17 Steve Snyder will bring the final jury in, and they will be
18 in the box for us to proceed, and I'll excuse the remaining
19 folks.

20 If we need to do sidebars, if we need to do
21 something outside the presence of the jury, I'll excuse the
22 jury, have them go into the jury room, so I can talk to you
23 in open court.

24 We will do all questioning from counsel table. I
25 think for the trial I'm either going to have you all

1 standing or sitting. I don't want you doing both things.
2 I think it makes it easiest if I just have you sitting. I
3 don't know. How does everybody feel about that? Any
4 preference here?

5 MR. FELSON: I don't have a preference.

6 THE COURT: Ms. Cross? Mr. Thapar?

7 MS. CROSS: We have no preference, Your Honor.
8 We were just going to go along with whatever the defense
9 wanted.

10 THE COURT: I think what I'm concerned about is,
11 with the microphone on the table, if you're standing it may
12 not pick your voice up. You know, if we had a different
13 kind of microphone.

14 MR. ANDREWS: Your Honor, we did have a question.
15 Would you want opening and closing done seated, as well as
16 questioning or --

17 THE COURT: What do -- you know, Mr. Snyder
18 reminded me what we did in the Waagner case was we have a
19 little podium thing that we can put right on counsel table.
20 So you can stand behind that and address the jury right at
21 counsel table.

22 MR. ANDREWS: That would be fine.

23 THE COURT: Mr. Rich, my law clerk, has asked if
24 we want -- if I want to allow supplemental questions to be
25 submitted after you take a look at the questionnaires, and

1 the answer is yes. If there is anything after you get the
2 questionnaires, if there is anything that you see in the
3 questionnaires that makes you want to ask any additional
4 questions of a particular juror, you can go ahead and
5 submit those to the Court. If you would do it as soon as
6 possible, that would be great.

7 I would say, I guess, we need to have Linda get
8 them, the questionnaires, by about Tuesday, because I would
9 like to get that by at least Thursday of next week so that
10 we have got a chance to add those into my questions by
11 Friday, because then we have got the holiday, and then we
12 have got trial that Tuesday morning. So if you could get
13 those to me by Thursday, the 29th, we will incorporate
14 them, if we think they're appropriate, into my questions.

15 We have talked about marking exhibits. I think
16 we have talked about just about everything.

17 Any questions by anybody?

18 MR. THAPAR: Your Honor, can I raise one? There
19 was one related issue just regarding discovery pursuant to
20 Rule 16(b), I guess. We have complied with the defendants'
21 discovery requests as mentioned before.

22 Today it has come to our attention through this
23 final pretrial conference that the defendants intend to
24 offer documents and tangible objects possibly as evidence
25 or as exhibits. In addition, Mr. Tyreese Pugh, we

1 understand, possibly has an expert witness.

2 Pursuant to 16(b)(1)(A) and (B), we request the
3 documents, tangible objects and reports of examinations.
4 We have made this request before in writing to the
5 defendants. In addition, pursuant -- we have provided our
6 expert report pursuant to 16(a)(1)(E), and we will request
7 the same pursuant to 16(b)(1)(C) of Mr. Tyreese Pugh, his
8 expert report, and that he comply with everything under
9 16(b)(1)(C). Thank you.

10 THE COURT: Thank you, Mr. Thapar.

11 Mr. Felson, do you have a response?

12 MR. FELSON: I think we actually had a motion
13 hearing on my expert a few weeks ago.

14 THE COURT: Was that before I was involved?

15 MR. FELSON: No. You ruled on it. You gave me
16 the finances to hire an identification expert.

17 MR. THAPAR: That is correct, Your Honor. You
18 gave him the finances, but that doesn't mean we have
19 received a report.

20 MR. FELSON: Okay. All right.

21 MR. THAPAR: It's not an issue with regards to
22 finances, just so I'm clear.

23 THE COURT: No. I understand that. You want the
24 report.

25 Do you have a report, Mr. Felson?

1 MR. FELSON: No, I don't yet. I'm -- he's really
2 just going to testify to -- I mean, you probably heard
3 these experts before. They're from around the country.
4 They're going to testify on the difficulty of making an eye
5 witness identification when you have a brief look under
6 stress and that kind of thing. It's not really specific
7 to -- he's not going to do an interview or voir dire of
8 this particular witness. It's just sort of a general
9 concept. So there is not a report, per se, I don't think.
10 There is general writings on the subject maybe.

11 MR. THAPAR: I think I'm misspeaking, Your Honor.
12 Maybe that's causing the confusion. I guess what we
13 wanted -- and perhaps that's the extent of it, and, if
14 that's the extent of it, we don't have any objection to him
15 not putting it in writing. I'm just going to read the
16 rule: Under the following circumstances, the defendant
17 shall, at the government's request, disclose to the
18 government a written summary of testimony that the
19 defendant intends to use under rules 702, 703 or 705 of the
20 Federal Rules of Evidence at trial. And then it goes on.

21 But that's what we're asking for. That's the
22 total of what we're asking for. And if all it is is that
23 identifications are difficult to make and that's all we're
24 going to hear at trial, then we don't have an objection to
25 him not providing us a written summary.

1 We would like to see a curriculum vitae at some
2 point, and we understand that can come at a later day. But
3 and then the documents --

4 THE COURT: Mr. Felson, can you provide a
5 curriculum vitae?

6 MR. FELSON: Yes. Just for the record, Tyreese
7 Pugh's motion for expert witness fees was granted on --

8 THE COURT: No. We're not disputing the fact
9 that it's being paid for. They're just asking under the
10 rule that, if there is a report, that it be provided to
11 them.

12 MR. FELSON: I understand. There is no report
13 per se.

14 THE COURT: All right. Mr. Andrews?

15 MR. ANDREWS: As to Mr. Walter Pugh and I have
16 discussed as to the tangible documents he may use, he'd --

17 THE COURT: Can you talk to me, Mr. Andrews,
18 because I can't hear you?

19 MR. ANDREWS: I'm sorry, Your Honor. At the time
20 when we provide that to the Court, which I understand is
21 Monday, we will also provide a copy of those documents.
22 Even though some of those are also included in the
23 government's own list of exhibits, we will provide those to
24 the government as well.

25 MR. THAPAR: That's perfectly acceptable by us.

1 If Mr. Tyreese Pugh has any, if that works for them, we
2 will appreciate that.

3 THE COURT: Mr. Felson, is that agreeable with
4 you?

5 MR. FELSON: Yes.

6 THE COURT: All right. Anything further,
7 counsel?

8 All right. Then the Court will see you on
9 September the 3rd. Yes?

10 DEFENDANT W. PUGH: Giving him his pen back.

11 THE COURT: Okay. The Court will see you all on
12 September 3rd. If there are any problems next week, please
13 let my law clerks know.

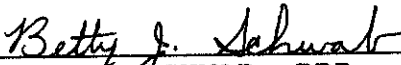
14 Mr. Rich is going to be the primary law clerk on
15 this case, but Ms. Stang is also going to be assisting. So
16 counsel can contact either one of my clerks if you have got
17 a question.

18 Thank you, everyone.

19 PROCEEDINGS CONCLUDED AT 3:30 P.M.

20 C E R T I F I C A T E

21 I, Betty J. Schwab, the undersigned, do
22 hereby certify that the foregoing is a correct
23 transcript from the record of the proceedings in
24 the above-entitled matter.

25 
BETTY J. SCHWAB, RPR
Official Reporter